

Oct 22, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

E.W. BRANDT & SONS, INC.,  
Plaintiff,  
v.  
EXCLUSIVE PRODUCE, INC.,  
Defendant.

No. 1:19-cv-03152-SAB

**ORDER GRANTING MOTION  
FOR DEFAULT JUDGMENT**

Before the Court is Plaintiff's Motion for Default Judgment, ECF No. 8. Plaintiff is represented by Shane P. Cramer. Defendants have not appeared. The motion was decided without oral argument. In its Motion, Plaintiff requests that the Court enter default judgment in its favor and award it damages and attorney's fees. *See* ECF No. 8. Having considered the motion and relevant caselaw, the Court **grants** Plaintiff's Motion for Default Judgment, but **denies** its request for attorney's fees.

**Factual and Procedural Background**

Plaintiff, a fruit and producer seller, alleges that it sold and shipped apricots and cherries to Defendant in three transactions in July 2017. ECF No. 1 at ¶ 5. Defendant claimed that some of the produce shipped pursuant to the first two transactions were damaged; in response, Plaintiff revised the invoices and reduced the contract price. *Id.* at ¶ 6. Defendant, however, never paid the invoices and owed Plaintiff a total of \$147,352.31 under the contracts. *Id.* at ¶ 7.

1 On April 20, 2018, Plaintiff filed an administrative reparation complaint  
2 pursuant to the Perishable Agricultural Commodities Act (PACA) with the U.S.  
3 Department of Agriculture. In its complaint, Plaintiff sought an award confirming  
4 the amount due to it from Defendant to collect that amount. *Id.* at ¶ 9. On August  
5 29, 2018, the Secretary of Agriculture issued a Reparation Order in favor of  
6 Plaintiff and awarded Plaintiff the following damages: (1) \$147,352.31 in  
7 principal; (2) \$26,380.84 in prejudgment interest (1.5% per month from September  
8 1, 2017 to August 29, 2018); (3) \$3,595.39 in post-judgment interest (2.44% per  
9 annum from August 29, 2018 until paid); and (4) \$500 in filing fees. *Id.* at ¶ 11.  
10 Full payment under the Reparation Order was due within 30 days of entry of the  
11 Order. *Id.* at ¶ 12. Defendant did not appeal the Order, nor did it pay any portion of  
12 the order within the 30-day time frame provided. *Id.* at ¶¶ 12-13.

13 Plaintiff filed its Complaint here on July 2, 2019 to enforce the Reparation  
14 Order award pursuant to PACA. Defendant was served in accordance with the  
15 Federal Rules of Civil Procedure but failed to answer or file any responsive  
16 pleading within 21 days of service. *See* ECF No. 5. On July 31, Plaintiff notified  
17 Defendant that it intended to move for default and default judgment pursuant to  
18 Federal and Local Rules 55. Defendant still failed to appear; thus, the Clerk of  
19 Court entered an order of default on August 26, 2019.

20 In its motion, Plaintiff requests that the Court grant it the \$177,828.54  
21 awarded in the Reparation Order, plus \$6,940 in attorney's fees, or, in the  
22 alternative, \$200,300.14 for breach of the original contracts.

### 23 Discussion

24 Motions for entry of default judgment are governed by Federal Rule of Civil  
25 Procedure 55(b). If the plaintiff is seeking damages in a "sum certain," then the  
26 Clerk may enter default judgment; otherwise, if there is any doubt as to the sum of  
27 damages due the plaintiff, the court must enter default judgment. *Franchise*  
28 *Holding, LLC v. Huntington Rest. Grp., Inc.*, 375 F.3d 922, 929 (9th Cir. 2004).

1 The entry of default judgment under Rule 55(b) is “an extreme measure.” *Cnty.*  
2 *Dental Servs. v. Tani*, 282 F.3d 1164, 1170 (9th Cir. 2002). “As a general rule,  
3 default judgments are disfavored; cases should be decided upon their merits  
4 whenever reasonably possible.” *Westchester Fire Ins. Co. v. Mendez*, 585 F.3d  
5 1183, 1189 (9th Cir. 2009). In determining whether to enter default judgment, a  
6 court should consider the following factors: “(1) the possibility of prejudice to the  
7 plaintiff; (2) the merits of the plaintiff’s substantive claims; (3) the sufficiency of  
8 the complaint; (4) the sum of money at stake in the action; (5) the possibility of a  
9 dispute concerning material facts; (6) whether the default was due to excusable  
10 neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure  
11 favoring decision on the merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th  
12 Cir. 1986). All well pleaded allegations in a complaint are deemed admitted on a  
13 motion for default judgment. *In re Visioneering Const.*, 661 F.2d 119, 124 (9th Cir.  
14 1981).

15 Based on the balance of the *Eitel* factors, the Court finds that Plaintiff is  
16 entitled to default judgment in its favor. First, Plaintiff will be prejudiced if default  
17 judgment is not entered. Plaintiff will not be awarded the money it is owed under  
18 the Reparation Order, and its only other option would be to file in either  
19 Washington state court or in New York federal court. Given that Defendant has  
20 already failed to appear and answer in this Court, requiring Plaintiff to go through  
21 this burdensome step would cause it prejudice. Second, Plaintiff’s substantive  
22 claims have merit. Plaintiff has already received a judgment from the Department  
23 of Agriculture in its favor and is entitled to file suit in district court to claim  
24 damages resulting from the nonpayment of that judgment. *See* 7 U.S.C. § 499g(b).  
25 The Reparation Order serves as prima facie evidence of the substantive merit of  
26 Plaintiff’s claims. *Id.* Third, Plaintiff’s Complaint clearly outlines Plaintiff’s claims  
27 for payment from Defendant. Fourth, although the sum of money at stake in this  
28 case is significant, Plaintiff was entitled to performance by Defendant under the

1 2017 contracts. The fact that the amount due under the Reparation Order  
2 recognizing those breached contracts is nearly \$180,000 does not mean that the  
3 Court must weigh this factor against granting default judgment. Fifth, there could  
4 arguably be a dispute as to material fact here—such as whether Defendant  
5 repudiated the contracts for nonconformity; this factor would weigh against  
6 granting default judgment. Sixth, there is no evidence that Defendant’s failure to  
7 appear or answer was due to excusable neglect or delay. Finally, although the  
8 Federal Rules of Civil Procedure strongly prefer deciding cases on their merits, this  
9 does not weigh against granting default judgment here. Plaintiff has a valid  
10 judgment in its favor from the Department of Agriculture and has a statutory right  
11 to enforce that judgment by seeking damages in the district court.

12       Thus, based on these factors, the Court concludes that Plaintiff is entitled to  
13 default judgment. In its Motion, Plaintiff asserts that it is entitled to judgment  
14 either in the amount of the Reparation Order—\$177,828.54—plus attorney’s fees  
15 or in the amount of the original breached contracts—\$200,300.14. Because the  
16 posture of this case is to enforce the Reparation Order, the Court awards Plaintiff  
17 \$177,828.54 under the Reparation Order.

18       However, Plaintiff is not entitled to attorney’s fees at this time. Under 7  
19 U.S.C. § 499g(b), Plaintiff is entitled to “a reasonable attorney’s fee” if it finally  
20 prevails at the Department of Agriculture. Although Plaintiff did prevail before the  
21 Department, Plaintiff has not met its burden of proof in order to support its claim  
22 for fees. In its Motion, Plaintiff did not include a calculation of attorney’s fees or  
23 attach any affidavits or exhibits in support of its claim for fees. Rather, Plaintiff  
24 only asserted the amount of attorney’s fees incurred. *See, e.g.*, ECF No. 10 at ¶ 11.  
25 Accordingly, the Court denies Plaintiff’s request for attorney’s fees at this time.  
26 However, Plaintiff may file a separate motion for attorney’s fees—including  
27 documentation in support of its requested fee award—if it so chooses.

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1 **Accordingly, IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Default Judgment, ECF No. 8, is **GRANTED**.

3 2. Judgment is to be entered in Plaintiff's favor in the total amount of  
4 \$177,828.54 as follows:

5 a. \$147,352.31 in principal;

6 b. \$26,380.84 in prejudgment interest (1.5% per month from September  
7 1, 2017, to August 29, 2018);

8 c. \$3,595.39 in post-judgment interest (2.44% per annum from August  
9 29, 2018, until paid); and

10 d. \$500 in filing fees.

11 3. Plaintiff's request for attorney's fees is **DENIED**. If Plaintiff would like  
12 to seek attorney's fees, it may file a separate motion with the Court.

13 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
14 this Order, provide copies to counsel, and close the file.

15 **DATED** this 22nd day of October 2019.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive style and is positioned to the right of the court seal.

21 Stanley A. Bastian  
22 United States District Judge  
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